

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

Ann W. Humphrey, individually and  
on behalf of all others similarly situated,

Plaintiff

v.

United Way of the Texas Gulf Coast,  
a Texas non-profit corporation, and  
United Way of the Texas Gulf Coast  
Cash Balance Plan,

Defendants.

Case No. H 05-758  
Hon. Melinda Harmon  
Mag. Frances H. Stacy

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**PLAINTIFF/CLASS REPRESENTATIVE ANN W. HUMPHREY’S OBJECTIONS TO  
DEFENDANTS’ MOTION TO STAY PROCEEDINGS PENDING MEDIATION  
AND REQUEST FOR EXPEDITED CONSIDERATION<sup>1</sup>**

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Plaintiff/Class Representative Ann W. Humphrey (“Humphrey”) has encouraged defendants to participate in mediation for many months, and intensified her efforts following the Court’s opinion on her motion for certification of the Class. However, Humphrey objects to staying all proceedings during mediation and to other aspects of Defendants’ Motion to Stay Proceedings and for Mediation (“Stay Motion”) in light of the current posture of the case.

As an initial matter, there is outstanding the issue of who is eligible for an Early Retirement Pension (“ERP”). This was the subject of the October 12, 2007 Rule 16 Conference, and the Court has not yet ruled on that issue. Humphrey believes the Court’s ruling on that issue must precede the

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<sup>1</sup> Unless otherwise indicated, all capitalized terms herein have the same meaning ascribed to them in the Complaint or United Way of the Texas Gulf Cost Cash Balance Plan, as amended and restated effective January 1, 1996 (“96Plan”), as the case may be.

parties' attempt to mediate the dispute. Class Counsel and Humphrey cannot be sure who they are, or should be, representing in the mediation without the Court's ruling.

Additionally, the parties and mediator will need damages information in order to mediate the dispute to settlement. At a minimum, the damages information needed is as follows:

For all persons who earned a pension under the Prior Plan and 96Plan and **received an ERP** based on meeting the requirements under §5.3 of the 96Plan (i.e., at least age 55, but not age 65, and at least 5 years of service **OR** at least age 50, but not age 55, and age + service = at least 65) --

name  
social security number  
last known address  
date of birth  
date of hire  
termination date  
benefit commencement date  
if elected lump sum, amount distributed and whether it was present value of Participant's Prior Plan accrued benefit or Participant's Account Balance (as defined in First Amendment to 96Plan)  
if elected annuity, the monthly amount and whether it was the Prior Plan accrued benefit or an annuity derived from the Participant's Account Balance  
total Contribution Credits  
total Interest Credits

For all persons who earned a pension under the Prior Plan and 96Plan and (i) **received a Deferred Vested Retirement Pension ("DVP")**, and (ii) as of their benefit commencement date, satisfied the age requirement under §5.3 (i.e., at least age 55, but not age 65, and at least 5 years of service **OR** at least age 50, but not age 55, and age plus service = at least 65) --

name  
social security number  
last known address  
date of birth  
date of hire  
termination date  
benefit commencement date  
if elected lump sum, amount distributed and whether it was present value of Participant's Prior Plan accrued benefit or Participant's Account Balance (as defined in First Amendment to 96Plan)  
if elected annuity, the monthly amount and whether it was the Prior Plan accrued benefit or an annuity derived from the Participant's Account Balance  
total Contribution Credits

total Interest Credits

For all persons who earned a pension under the Prior Plan and 96Plan and **received a Normal Retirement Pension (“NRP”) –**

name

social security number

last known address

date of birth

date of hire

termination date

benefit commencement date

if elected lump sum, amount distributed and whether it was present value of Participant’s Prior Plan accrued benefit or Participant’s Account Balance (as defined in First Amendment to 96Plan)

if elected annuity, the monthly amount and whether it was the Prior Plan accrued benefit or an annuity derived from the Participant’s Account Balance

total Contribution Credits

total Interest Credits

For all persons who earned a pension under the Prior Plan and 96Plan and **received a Late Retirement Pension (“LRP”) –**

name

social security number

last known address

date of birth

date of hire

termination date

benefit commencement date

if elected lump sum, amount distributed and whether it was present value of Participant’s Prior Plan accrued benefit or Participant’s Account Balance (as defined in First Amendment to 96Plan)

if elected annuity, the monthly amount and whether it was the Prior Plan accrued benefit or an annuity derived from the Participant’s Account Balance

total Contribution Credits

total Interest Credits

For all persons who earned a pension under the Prior Plan and 96Plan and (i) are **still employed by UNT or a Participating Agency** or have terminated service, but not yet received their Pension, and (ii) have **not attained age 65**, but have **at least 5 years of service** –

name  
social security number  
last known address  
date of birth  
date of hire  
total Contribution Credits as of settlement date (assuming mediation results in a settlement)  
total Interest Credits as of settlement date (assuming mediation results in a settlement)

For all persons who earned a pension under the Prior Plan and 96Plan, and (i) are **still employed by UNT or a Participating Agency** or have terminated service, but not yet received their Pension, and (ii) are (or were when they terminated) **at least age 65** (no years of service requirement where Participant terminates service at or after age 65; see §§5.1, 5.2, 6.3 and 6.4 of 96Plan) --

name  
social security number  
last known address  
date of birth  
date of hire  
total Contribution Credits as of settlement date (assuming mediation results in a settlement)  
total Interest Credits as of settlement date (assuming mediation results in a settlement)

The foregoing groupings are based on the persons Humphrey identified as being eligible for an ERP and, thus, members of the Class. Humphrey identified those persons (i) in her dispositive briefs, (ii) in her class certification motion and brief and reply brief, (iii) at oral argument on her class certification motion, (iv) in her written submission of Points for the Court to Consider in Connection with the October 12, 2007 Rule 16 Conference, and (v) during oral argument at the Rule 16 Conference. Without advance clarification from the Court as to who is in the Class and the requisite damages information for each Class member, it will be impossible to mediate this dispute to settlement. Moreover, in order to effectively work with the damages information before and during the settlement, it must be produced in Excel spreadsheet format (unconverted to any other

format) at least two weeks before the mediation.

Finally, the Court should reject defendants' argument that a stay of proceedings is necessary because (according to defendants) "United Way's Counsel has determined that additional filings relating to the above motions [i.e., the parties' cross-motions for summary judgment and submissions relating to the October 12, 2007 Rule 16 conference] may need to be filed." The deadline for filing dispositive motions has long passed, and, at the end of the Rule 16 conference, defendants' counsel represented that there were no other issues the Court needed to consider in connection with that conference. As importantly, defendants' motion to substitute counsel expressly stated that the substitution would not be "urged as a ground for continuing any deadline." The Court should flatly refuse to countenance this abrupt about face.

Wherefore, Humphrey requests that the Court (i) DENY defendants' request to stay the proceedings, or at least DENY any stay with respect to the Court's anticipated ruling on the Rule 16 Conference issue; and (ii) with respect to any mediation of this dispute, ORDER defendants to produce to Humphrey's attorneys the following information at least two weeks before the mediation:

(A) For each Class member (as clarified by the Court's anticipated ruling as to who is eligible for an ERP), the respective damages information delineated above in Excel spreadsheet format; and

(B) As to any person who will participate in the settlement negotiations (either directly or indirectly), the person's--

- name

- relationship and title, if any, with respect to UNT or any Participating Agency, including any insurer

- relationship and title, if any, with respect to Baker Botts, Mercer or any other law firm or actuarial firm, including any insurer

- employer

-business address.<sup>2</sup>

A proposed Order is attached hereto.

Respectfully submitted,

/s/ Eva T. Cantarella (attorney in charge)

Hertz Schram PC

By: Bradley J. Schram (MI Bar #P26337)

Robert P. Geller (MI Bar #P34391)

Eva T. Cantarella (MI Bar #P51917)

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Dated: November 2, 2007

Bruckner Burch PLLC

By: William H. Bruckner (TX Bar # 03240500)

Local Counsel for Plaintiff

1000 Louisiana, Ste. 1300

Houston, TX 77002

off. (713) 877-8788; fax.(713) 877-8065

Dated: November 2, 2007

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<sup>2</sup> Other than Class Counsel, Humphrey anticipates that the only other person who will participate in any mediation on behalf of the Class would be an actuary who would be available by phone. Humphrey will identify the actuary she selects for this purpose if and when there is an order or stipulation to mediate the dispute.

**CERTIFICATE OF SERVICE**

I hereby certify that on November 2, 2007, I caused to be served on the following attorney in charge for defendants, a copy of (i) Plaintiff/Class Representative Ann W. Humphrey's Objections to Defendants' Motion to Stay Proceedings Pending Mediation and Request for Expedited Consideration, (ii) this Certificate of Service, and (iii) a proposed Order, via the Court's CM/ECF system.

Reagan M. Brown (TX Bar 0316220)  
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Fulbright Tower  
1301 McKinney, Ste. 5100  
Houston, TX 77010  
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/s/ Eva T. Cantarella (attorney in charge for plaintiffs)  
Eva T. Cantarella

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

Ann W. Humphrey, individually and  
on behalf of all others similarly situated,

Plaintiff

v.

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**ORDER**

The Court having read and considered Defendants' Motion To Stay Proceedings Pending Mediation And Request for Expedited Consideration and Plaintiff/Class-Representative Ann W. Humphrey's objections to the motion, hereby **DENIES** any stay with respect to the Court's upcoming ruling on the Rule 16 Conference issue, which will clarify who is in the Class; and (ii) with respect to any mediation of this dispute, **ORDERS** defendants to produce the following information at least two weeks before the mediation:

(A) For each Class member, all information necessary to calculate the Class member's damages in Excel spread sheet format (unconverted to any other format), which information shall, at a minimum, include—



For all persons who earned a pension under the Prior Plan and 96Plan and **received an Early Retirement Pension (“ERP”)** based on meeting the requirements under §5.3 of the 96Plan (i.e., at least age 55, but not age 65, and at least 5 years of service **OR** at least age 50, but not age 55, and age + service = at least 65) --

name

social security number

last known address

date of birth

date of hire

termination date

benefit commencement date

if elected lump sum, amount distributed and whether it was present value of Participant’s Prior Plan accrued benefit or Participant’s Account Balance (as defined in First Amendment to 96Plan)

if elected annuity, the amount and whether it was the Prior Plan accrued benefit or an annuity derived from the Participant’s Account Balance

total Contribution Credits

total Interest Credits

For all persons who earned a pension under the Prior Plan and 96Plan and (i) **received a Deferred Vested Retirement Pension (“DVP”)**, and (ii) as of their benefit commencement date, satisfied the age requirement under §5.3 (i.e., at least age 55, but not age 65, and at least 5 years of service **OR** at least age 50, but not age 55, and age plus service = at least 65) --

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if elected annuity, the amount and whether it was the Prior Plan accrued benefit or an annuity derived from the Participant’s Account Balance

total Contribution Credits

total Interest Credits

For all persons who earned a pension under the Prior Plan and 96Plan and **received a Normal Retirement Pension (“NRP”) --**

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social security number  
last known address  
date of birth  
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if elected lump sum, amount distributed and whether it was present value of Participant’s Prior Plan accrued benefit or Participant’s Account Balance (as defined in First Amendment to 96Plan)  
if elected annuity, the amount and whether it was the Prior Plan accrued benefit or an annuity derived from the Participant’s Account Balance  
total Contribution Credits  
total Interest Credits

For all persons who earned a pension under the Prior Plan and 96Plan and **received a Late Retirement Pension (“LRP”) --**

name  
social security number  
last known address  
date of birth  
date of hire  
termination date  
benefit commencement date  
if elected lump sum, amount distributed and whether it was present value of Participant’s Prior Plan accrued benefit or Participant’s Account Balance (as defined in First Amendment to 96Plan)  
if elected annuity, the amount and whether it was the Prior Plan accrued benefit or an annuity derived from the Participant’s Account Balance  
total Contribution Credits  
total Interest Credits

For all persons who earned a pension under the Prior Plan and 96Plan and (i) are **still employed by UNT or a Participating Agency** or have terminated service, but not yet received their Pension, and (ii) have **not attained age 65**, but have **at least 5 years of service** --

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date of birth  
date of hire  
total Contribution Credits as of settlement date (assuming mediation results in a settlement)  
total Interest Credits as of settlement date (assuming mediation results in a settlement)

For all persons who earned a pension under the Prior Plan and 96Plan, and (i) are **still employed by UNT or a Participating Agency** or have terminated service, but not yet received their Pension, and (ii) are (or were when they terminated) **at least age 65** –

name  
social security number  
last known address  
date of birth  
date of hire  
total Contribution Credits as of settlement date (assuming mediation results in a settlement)  
total Interest Credits as of settlement date (assuming mediation results in a settlement); and

(B) As to any person who will participate in the settlement negotiations (either directly or indirectly), the person's--

- name
- relationship and title, if any, with respect to UNT or any Participating Agency, including any insurer
- relationship and title, if any, with respect to Baker Botts, Mercer or any other law firm or actuarial firm, including any insurer
- employer
- business address

Dated: November \_\_\_, 2007

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Honorable Melinda Harmon,  
United States District Judge  
for the Southern District of Texas, Houston Division